Attorney Docket # 5255-96PUS PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Lothar GINZEL et al.
Serial No.: 10/586,077
Filed: August 29, 2006
For: Door Closer With a Drive

Examiner: O'Brien, Jeffrey D.
Group Art: 3677

Commissioner for Patents
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

SIR:

This is a Request for a Panel Review of Issues on Appeal. A Notice of Appeal is filed concurrently herewith in response to the final Office Action dated February 26, 2009. No amendments are being filed with this Request.

Arguments supporting the Request for Review are as follows.

ARGUMENTS

Claims 18-35 are pending in this application and have been finally rejected under 35 U.S.C. § 103(a) over US 4,658,468 to Tillmann in view of US 2003/0213092 to Fischbach.

The matter to be reviewed in this Request is that the Examiner failed to establish a *prima facie* case of obviousness against claims 18-35 based on Tillmann and Fischbach.

Independent claim 18 recites a door closure having "a first spring ... extending orthogonally to the longitudinal housing direction" and "a pump for pumping a brake fluid at least one of to and from the first space." The above recited features of independent claim 18 are not taught by Tillmann and Fischbach because:

(i) The claimed invention requires more than combining and rearranging elements of Tillmann in order for the combined Tillmann and Fischbach to operate properly, and

(ii) It is not obvious to combine Tillmann and Fischbach in order to pump a brake fluid to/from a space defined by a brake piston and the housing, as is recited in independent claim 18.

(i)

The Office Action acknowledges that the combined Tillmann and Fischbach fails to teach "a first spring ... extending orthogonally to the longitudinal housing direction" as recited in independent claim 18, but takes the position that independent claim 18 is a rearrangement of the combined references. More specifically, the Examiner states that the spring blocking member 28 and roller 26 of Tillmann would maintain the same function if rearranged to be located orthogonally to the longitudinal housing direction.

Applicants disagree. Because Tillmann requires the roller 26 and springs 29, 30 to move on the longitudinal direction of the housing 16, the mere rearrangement thereof is insufficient for the combined Tillmann and Fischbach to operate properly for the following detailed reasons.

Tillmann and Fischbach are constructed as respectively a door closer and a door drive. The door closer in Tillmann employs a cam mechanism (see, col. 6, ll. 62-63 and col. 7, ll. 14-15 and 46 of Tillmann). A roller is provided in the cam mechanism and pressed against the cam,

which is attached to an output shaft of the door closer/drive. On the other hand, Fischbach teaches a door drive with a toothed rack 3, 4 mechanism (see, e.g., Fig. 7 of Fischbach). The toothed rack 3, 4 in Fischbach meshes with a gear-wheel, which is attached to the output shaft of the door closer/drive.

There is no teaching as to how Tillmann's elongated door check can be rearranged to into an orthogonal configuration. If Tillmann's roller 26, plunger 28, and springs 29, 30 are to be "rotated" for about 90° from what is shown in Fig. 2 and extend orthogonally to the longitudinal direction of the unit 12, such modified door check cannot operate without reconstruction or further modifications of at least the housing 16 and the shape of the cam 22. For example, Tillmann is configured as an elongated door check. Such elongated housing 16 cannot be "rearranged" to accommodate an orthogonally extending plunger 28 and springs 29, 30, without being reconstructed. Moreover, the cam 22 in the modified Tillmann is to be redesigned/repositioned so that the socket 23 of the came 22 can receive the rotated roller 26 at an initial position of the door panel. In addition, the modified door check may cause the plunger 28 to interfere with the roller 35, the pivot member 36, or the bottom wall 45 during the door opening/closing operation, due to the close proximity of the pivot members 27, 36. Consequently, additional modifications must be made before the combined Tillmann and Fischbach can operate properly as does the claimed invention.

In fact, one skilled in the art will not be motivate to carry out such modification and to arrange Tillmann's piston end portion orthogonally to the longitudinal direction of the unit 12. The reason is that such modification will cause the piston end portion to extend orthogonally to the door panel in a normal use position. Such orthogonal configuration not only compromises the aesthetic appearance of the modified door closer but also creates a hazardous situation to the users. As a result, one skilled in the art will not modify Tillmann or rearrange the elements in the combined Tillmann and Fischbach to arrive at the claimed invention.

Accordingly, the combined Tillmann and Fischbach fail to teach or suggest "a first spring... extending orthogonally to the longitudinal housing direction," as explicitly recited in independent claim 18. Therefore, independent claim 18 is not obvious over Tillmann in view of Fischbach for at least the above reasons.

(ii)

The Office Action acknowledges that Tillmann fails to teach "a pump for pumping a brake fluid at least one of to and from the first space," as recited in independent claim 18 but cites Fischbach's pump to remedy Tillmann's deficiencies. Applicants disagree because it is not obvious to combine Tillmann and Fischbach in order to pump a brake fluid to/from a space defined by a brake piston and the housing, as is recited in independent claim 18.

Tillmann teaches a door closer without a door opening mechanism. Fischbach on the other hand teaches a pump 44, which can operate in both flow directions and is used together with an overload duct 12.

Neither Tillmann nor Fischbach teach or suggest how Tillmann can be modified to include a brake fluid pumping system. To integrate an operating mechanism, such as the motor/pump arrangement taught by Fischbach, into Tillmann's door closer, Tillmann must be further modified in order for the newly added operating mechanism to cooperate with the elements in Tillmann's existing door check. For example, Tillmann's piston chamber communicates with the housing interior by a check valve 46, a relief valve 48, channels 40-42, and a flow restrictor 43. Fischbach's pump 44 cannot be combined with Tillmann's door check without adjusting one or more of the check valve 46, the relief valve 48, and the flow restrictor 43. Consequently, one skilled in the art would not have recognized that the results of the combined Tillmann and Fischbach were predictable. See, MPEP § 2143.A.

It is the applicants of the subject application who provide the door drive as recited in independent claim 18.

In fact, the incorporation of Fischbach's pump 44 may change the operation of Tillmann's check valve 46, relief valve 48, and flow restrictor 43 to the extend that such modification of Tillmann would change the principle of operation of Tillmann. Consequently, Tillmann and Fischbach are not sufficient to render the claimed invention *prima facie* obvious. See, MPEP § 2143.01.VI.

Moreover, even if Tillmann and Fischbach can be combined, as suggested in the Office Action, the combined Tillmann and Fischbach fail to teach the above cited claim features of independent claim 18. More specifically, Fischbach does not teach that its overload duct 12 leads to "a first space" defined by the brake piston and the housing. In fact, Fischbach does not have such a first space as Fischback does not have a brake piston. Therefore, Fischbach does not teach what Tillmann lacks.

Accordingly, the combined Tillmann and Fischbach fail to teach or suggest "a pump for pumping a brake fluid at least one of to and from the first space," as is recited in independent claim 18. Independent claim 18 is thus not obvious over Tillmann and Fischbach for the above additional reasons.

In light of the foregoing, independent claim 18 and its dependent claims 19-35 patentably distinguish over Tillmann and Fischbach. The subject patent application is thus deemed to be in condition for allowance and notice to that effect is respectfully solicited.

Respectfully submitted,
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